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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1156

MARIANNE O'BRIEN REYNOLDS,
Petitioner,

vs.

ESTATE OF RICHARD J. REYNOLDS,
Deceased, *et al.*,
Respondents.

BRIEF OF THE RESPONDENT THE STATE OF GEORGIA IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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BRIEF OF THE RESPONDENT THE STATE OF GEORGIA IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

OPINIONS BELOW

The opinion of the Supreme Court of Georgia is reported at 238 Ga. 1, 230 S.E.2d 842 (1976). Petition, p. 3a.

JURISDICTION

The opinion of the Supreme Court of Georgia was rendered on November 3, 1976. Petitioner's motion for rehearing was denied by the Supreme Court of Georgia on November 23, 1976. While the Petition for a Writ of Certiorari is timely, the State of Georgia strongly urges that this Court does not have jurisdiction to review the decision of the Supreme Court of Georgia pursuant to 28 U.S.C. § 1257(3), because

of petitioner's failure to raise in the state courts the federal issues asserted in the Petition.

QUESTIONS PRESENTED

1. Has petitioner properly presented any federal question invoking the jurisdiction of this Court?

2. Did the decision of the Supreme Court of Georgia, which was based on long-standing principles of Georgia law and which held that petitioner was not entitled to affirmative relief enforcing an alleged prenuptial contract, deprive petitioner of any right guaranteed by the Constitution of the United States?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitutional provisions and statutes involved in this case have been adequately set forth in the Petition and the brief of the other respondents, with the following exception:

28 U.S.C. § 1257(3)

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

STATEMENT OF THE CASE

This litigation began in December, 1975, when petitioner filed a complaint in the Superior Court of McIntosh County, Georgia, asserting that she was the true owner of some 16,000 acres of land on Sapelo Island, Georgia. In her complaint petitioner asked that the State of Georgia be enjoined from establishing an estuarine wildlife sanctuary on Sapelo Island, and in the alternative, she asked for damages in the sum of Six Hundred Million Dollars. Petitioner's claims rested solely upon a handwritten prenuptial agreement between herself and R. J. Reynolds dated October 18, 1945. The State of Georgia, respondent herein, moved for summary judgment, and the superior court entered an order sustaining the State's motions on each and every ground; the superior court judgment was then upheld by the Supreme Court of Georgia.

Record title to the aforesaid Sapelo Island property was vested in two landowners when this litigation began. The State of Georgia owned those lands situated on the north end of the island, and those lands on the south end of the island were owned by the Sapelo Island Research Foundation, Inc. Shortly after the Supreme Court of Georgia denied the petitioner's claims, the Foundation's holdings were purchased by the State of Georgia.

Petitioner first met R. J. Reynolds while he was serving with the armed forces during World War II, and this relationship led to discussions of marriage. Petitioner, by her own admissions, was reluctant to marry R. J. Reynolds but ultimately promised to do

so in exchange for his promise to convey to her all of the stock in Sapelo Plantation, Inc., a Georgia corporation which was then owner of the real estate involved in this case. Reynolds' promise in this regard is allegedly evidenced by the said 1945 prenuptial agreement. Subsequently, on August 7, 1946, petitioner and R. J. Reynolds were married, but the stock in Sapelo Plantation, Inc., was never transferred.

Notably, the prenuptial agreement was entered into at a time when R. J. Reynolds was already married to one Elizabeth Dillard Reynolds, of which marriage petitioner was well aware. This agreement, as aforesaid, was dated October 20, 1945, and R. J. Reynolds' divorce from Elizabeth Dillard Reynolds was not final until June 14, 1946. In view of these uncontested facts, the Supreme Court of Georgia held that the agreement between R. J. Reynolds and petitioner was void because it was in restraint of an existing marriage and tended to encourage divorce between R. J. Reynolds and Elizabeth Dillard Reynolds.

Petitioner and Reynolds were divorced on August 7, 1952, but prior to their divorce the subject Sapelo Island property was transferred to R. J. Reynolds, individually, and Sapelo Plantation, Inc., was dissolved. In the property settlement which accompanied their divorce no mention was made of the Sapelo Island property, and further, no mention of this property was made when petitioner concluded a property settlement with Reynolds' estate in 1965. Subsequent to the time of the divorce between petitioner and R. J. Reynolds, the aforesaid property was transferred to various bona fide purchasers including the State of Georgia.

The State received title to approximately 8,600 acres of the subject property on June 27, 1969, and the warranty deed conveying this property was recorded on July 9, 1969. At no time prior to either of these dates did the State have notice of petitioner's claim. The first notice of petitioner's claim came in the form of a telegram dated November 17, 1969, over four months after the State's warranty deed had been duly recorded.

ARGUMENT

I. THE PETITIONER HAS FAILED TO ESTABLISH JURISDICTION IN THE SUPREME COURT

The Petition asserts that this Court has jurisdiction pursuant to 28 U.S.C. § 1257(3), which provides that a final judgment by the highest court of a state may be reviewed by the Supreme Court by writ of certiorari "where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of . . . the United States." Thus petitioner is statutorily authorized to seek review in this Court only if she has properly set up or claimed some right under the Constitution.

To establish jurisdiction by certiorari, the federal right or claim presented to this Court must have been raised in the state court proceedings. *Beck v. Washington*, 369 U.S. 541, 553-54 (1962); *Godchaux Co. v. Estopinal*, 251 U.S. 179, 181 (1919). The Court has construed this rule to incorporate the requirement that the federal question have been raised in accordance with state procedures, including specifically the Georgia procedure requiring that the constitutional questions be presented at the trial court level. *See Stembridge v. Georgia*, 343 U.S. 541, 547 (1952).

In the present case, petitioner concedes that the federal questions presented in this Petition were not raised in the trial court, before the Supreme Court of Georgia, or in the motion for rehearing to the Supreme Court of Georgia and were not passed on by either court. Petition, p. 7. The petitioner's failure to raise her federal contentions in the state courts constitutes a waiver of any federal issues presented by this litigation. *See Herndon v. Georgia*, 295 U.S. 441, 443 (1935). The Court is urged to deny the Petition because of the failure to satisfy the requirements for this Court's exercise of certiorari jurisdiction.

Petitioner attempts to explain away her failure to raise the federal questions below by stating, in effect, that she assumed that the Supreme Court of Georgia would rule in her favor. Such excuse is patently insufficient. The grounds on which the Supreme Court of Georgia based its decision were raised and argued by the respondents in the trial court and formed the basis for the grant of summary judgment to the respondents. These same questions of state law were addressed by the parties in the briefs to the Georgia Supreme Court, and the Supreme Court of Georgia affirmed the decision of the trial court on one of the grounds set forth in the trial court's order granting summary judgment. Even in her motion for rehearing to the Georgia Supreme Court, the petitioner addressed only the state law questions involved and never raised any of the federal questions here presented. This cannot be characterized as an instance where the state court surprised the litigants with an unexpected decision which gave rise to a federal question. *See Saunders v. Shaw*, 244 U.S. 317, 320 (1920).

II. THE DECISION BELOW PRESENTED NO SIGNIFICANT FEDERAL ISSUE

A. The Decision Below, Based on Well-Established Georgia Law, Does Not Constitute a Taking of Any Property From Petitioner.

Petitioner brought this litigation in superior court, seeking a judicial declaration that she owned Sapelo Island, based on an alleged prenuptial agreement which was handwritten on a scrap of paper by R. J. Reynolds in 1945. She has never been in possession of the property and has no deed or other evidence of title thereto. In fact, at the time of the initiation of this lawsuit, Sapelo Island was held in part by the State of Georgia, pursuant to a duly recorded warranty deed, and in part by the Sapelo Island Research Foundation, Inc., also pursuant to a duly recorded warranty deed. The central issue in the litigation was whether petitioner had any legal or equitable ownership interest in the property. The Georgia courts thoroughly considered the question and concluded that she did not.

In a desperate attempt to have this Court overturn a decision of the Georgia Supreme Court with which she is dissatisfied, petitioner has asserted that her failure to prevail in this litigation resulted in a taking of her property by the State of Georgia without compensation in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

The Georgia courts have determined that petitioner has no legal or equitable ownership interest in the property. It is clear that this Court will not review state court decisions on issues relating to ownership of real property unless some principle of federal law controls. *Oregon v. Corvallis Sand and Gravel Co.*,

45 U.S.L.W. 4105, 4109 (January 12, 1977). The fact that this Court might have decided the legal issue differently, or that the decision of the state court might be erroneous, does not confer jurisdiction upon the United States Supreme Court. "[I]t takes more than a possible misconstruction by a court to make a case under the Fourteenth Amendment." *Seattle R. & S. Ry. v. Washington ex rel. Linhoff*, 231 U.S. 568, 570 (1913).

The "taking" argument is particularly inapposite in this case, where the Georgia courts simply declined to grant petitioner any affirmative equitable relief; the state court decision did not divest petitioner of any property right but simply preserved the status quo.

The petitioner seeks to create a federal issue by contending that the Georgia court's decision construing the Uniform Stock Transfer Act (Ga. Laws 1939, p. 384, *et seq.*) was an unforeseeable change in the state law. In making that contention, petitioner seeks to bring herself within the ambit of the concurring opinion of Justice Stewart in *Hughes v. Washington*, 389 U.S. 290, 294 (1967). That opinion focused on the fact that a 1946 opinion of the Washington Supreme Court had held that title to gradual accretions rests in the owner of the adjoining upland. 389 U.S. at 297. When the Washington court later held that accretions to littoral property belonged not to the adjoining owner but to the State, there was presented an example of a state court decision which, by unpredictably overruling an earlier decision, arguably had the effect of taking for public purposes property belonging to private landowners. In contrast, the Supreme Court of Georgia's decision was a reasonable interpretation of the statute

and was not in conflict with any prior decisions of that court. See infra, B.

The State of Georgia paid valuable consideration for both the northern part of Sapelo Island, to which it held title at the time of the filing of this litigation, and for the southern end of Sapelo Island, which it acquired shortly after the Supreme Court of Georgia affirmed the grant of summary judgment to the respondents herein. The Supreme Court of Georgia affirmed the trial court's holding that petitioner had no title to the property. Based on that decision, the State of Georgia purchased the property from the respondent Sapelo Island Research Foundation, Inc. Such facts can hardly be construed as a taking of private property for public purposes without just compensation.

B. The Decision of the Supreme Court of Georgia Was A Correct Interpretation of the Uniform Stock Transfer Act and Did Not Violate Petitioner's Fourteenth Amendment Due Process Rights.

Petitioner's entire case rests upon the validity of the handwritten prenuptial agreement of October 20, 1945. As was alleged in petitioner's complaint in the trial court, the consideration which supported this prenuptial agreement was a promise of marriage in exchange for a transfer of stock. The Georgia Supreme Court held that the prenuptial agreement was unenforceable because one of the parties to this agreement was already married.

In order to avoid this result petitioner argued in the Georgia Supreme Court that she owned this stock because it had been delivered to her in accordance with section one of the Uniform Stock Transfer Act and

that, therefore, her ownership rights were not being asserted pursuant to the prenuptial agreement. Even viewing petitioner's case from this perspective, the Georgia Supreme Court nevertheless held that the judgment of the trial court was correct.

The Uniform Stock Transfer Act in sections one and twenty-two, provided that stock could be transferred only by delivery. In determining whether the stock of Sapelo Plantation, Inc., had been delivered to the petitioner, the Georgia Supreme Court looked to the trial court record and to the Uniform Stock Transfer Act. Ga. Laws 1939, p. 384, *et seq.* The trial court record disclosed that the stock had not been physically delivered to petitioner, and therefore, the question was whether there had been a constructive delivery. *Owens v. Sun Oil Co.*, 482 F.2d 564 (10th Cir. 1973); *Foley v. Allen*, 170 F.2d 434, 437 (5th Cir. 1948).

Conceivably, there could have been constructive delivery if the stock had been transferred on the corporate books, but petitioner's complaint in the trial court specifically stated that the stock was not transferred on the books of the corporation. Since the trial court record showed that there had been neither actual nor constructive delivery of the stock and that, therefore, the statutory provisions on stock transfers were not satisfied, petitioner's case failed regardless of whether her claims were foreclosed by the prenuptial agreement.

The Georgia Supreme Court holding, then, did not deprive the petitioner of *her property* without due process of law because the petitioner never had an enforceable property right either in the stock of Sapelo Plantation, Inc., or in the assets of this corporation

which at one time included the 16,000 acres of land situated on Sapelo Island, Georgia. It is, of course, axiomatic that property interests are not created by the Constitution, but rather, as in the case at bar, they are created and defined according to state laws. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). In any event, the Georgia Supreme Court holding will have little impact upon the present securities market because the State of Georgia repealed the aforecited Uniform Stock Transfer Act fifteen years ago. *See* Ga. Laws 1962, pp. 156, 430.

C. The Decision of the Georgia Supreme Court that the Alleged Prenuptial Agreement was Unenforceable Because One of the Parties Thereto was a Married Person Violates Neither the Equal Protection Clause Nor the Due Process Clause of the Fourteenth Amendment.

The decision of the Supreme Court of Georgia declined to enforce rights asserted by petitioner under an alleged prenuptial agreement between petitioner and R. J. Reynolds, because R. J. Reynolds was at the time of the agreement married to someone else, of which fact petitioner was admittedly aware. Petition, p. 6a. The Supreme Court of Georgia affirmed the holding of the trial court that the contract was void as against the public policy of Georgia inasmuch as its consideration was a promise to marry a person then legally married. Petition, p. 5a. Such public policy does not contravene any provision of the United States Constitution and does not conflict with any decision of this Court.

The alleged prenuptial agreement upon which petitioner rests her claim was based on her promise to

marry R. J. Reynolds. On the date of such agreement, R. J. Reynolds was legally prohibited from proceeding with marriage to the petitioner because he was then bound by a valid existing marriage to his first wife. The legal restriction on his freedom to marry the petitioner is throughout this country codified in the form of laws against bigamy. *See Davis v. Beason,* 133 U.S. 333, 341 (1890). For example, Georgia law provides that a previous undissolved marriage constitutes a disability upon the legal ability to contract marriage. Ga. Code Ann. § 53-102 (Rev. 1974). The Criminal Code of Georgia makes it a misdemeanor to commit bigamy and, in addition, a misdemeanor to commit the offense of marrying a bigamist. Ga. Code Ann. §§ 26-2007, 2008 (Rev. 1972). The statute specifically states that an unmarried man or woman commits the offense of marrying a bigamist when he marries a person whom he knows to be the wife or husband of another. It is beyond cavil that the statutes prohibiting bigamy are valid and contravene no constitutionally protected rights. *See Mormon Church v. United States,* 136 U.S. 1, 50 (1890). And, since it would have been against Georgia law and public policy for petitioner to marry R. J. Reynolds, the Georgia courts can reasonably apply that State policy in refusing to grant her affirmative equitable relief to enforce an executory contract which violates that public policy.

As is appropriate for a court of equity, the Georgia court reviewed the position of the petitioner to determine whether she was entitled to equitable relief. Having found that she herself had entered into an executory contract in violation of the public policy of the State of Georgia, the court determined not to

intervene and to leave the parties in the position in which it found them. Petition, pp. 6a-7a. Such decision fully complies with holdings of this Court denying equitable relief to those seeking to enforce private contracts which are in violation of public policy. *See Shelley v. Kraemer,* 334 U.S. 1 (1948). Such a ruling is by no means discriminatory; it has been applied by the Georgia courts to both men and women [*Guffin v. Kelly,* 191 Ga. 880, 14 S.E.2d 50 (1941); *Morgan v. Wright,* 219 Ga. 385, 133 S.E.2d 341 (1963)] and to both married and unmarried persons [*Guffin v. Kelly, supra; Morgan v. Wright, supra; Reynolds v. Reynolds,* 217 Ga. 234, 123 S.E.2d 115 (1961)].

This Court has long recognized that matters dealing with marriage and divorce are peculiarly appropriate for state regulation. *In re Burrus,* 136 U.S. 586, 593-94 (1890); *Barber v. Barber,* 62 U.S. (21 How.) 582, 584 (1858). A federal interest arises only if a clear discrimination in such state regulation is demonstrated. *See, e.g., Loving v. Virginia,* 388 U.S. 1 (1967). No such discrimination has been shown in the present case and the State of Georgia urges this Court to leave undisturbed the decision of the Georgia Supreme Court.

D. The Decision of the Georgia Supreme Court That Georgia Laws Applied was Correct and Did Not Violate the Full Faith and Credit Clause of Article IV of the Constitution.

Petitioner is contending that the Georgia Supreme Court should have applied New York laws in determining the enforceability of the prenuptial agreement; however, the Georgia courts were under no obligation to apply any foreign laws which would contravene

Georgia's strong public policy which prohibits enforcement of contracts to marry when one of the parties to the contract is already married to another. *Morgan v. Wright*, 219 Ga. 385, 133 S.E.2d 341 (1963). This strong public policy encourages matrimonial harmony, but even if this policy position could be abrogated by a showing that the marriage contract does not actually promote the dissolution of an existing marriage, the petitioner's case would not be improved.

Notwithstanding the public policy question, there are many other reasons why the laws of Georgia apply in this case. First, the corporation in which the petitioner is claiming stock ownership was a Georgia corporation, thus giving the State of Georgia a special interest in applying the law of this State. *Henley v. Myers*, 215 U.S. 373, 383 (1910). In addition, petitioner is ultimately claiming ownership of 16,000 acres of Georgia real property, and unquestionably, it is a well-established doctrine that the laws of a state in which land is situated control and govern questions of ownership. *Clarke v. Clarke*, 178 U.S. 186 (1900). Another factor is that none of the parties to this case are New York residents such as to give the State of New York any real interest in the resolution of this case. Since Georgia has a greater interest in having its laws applied than does the State of New York, it follows, *a fortiori*, that the holding of the Georgia Supreme Court was correct. *See Restatement of Conflicts (Second)* §§ 6 and 188 (1971); *Eldon Industries, Inc. v. Paradies & Co.*, 397 F.Supp. 535, 538-39 (N.D. Ga. 1975).

Furthermore, even if the Georgia Supreme Court had applied New York laws the result would have been no different. The case of *In re Estate of Fleischmann*,

64 Misc.2d 924, 316 N.Y.S.2d 272 (1970), cited by the petitioner, is not the present law of the State of New York with reference to prenuptial contracts such as that involved in the case at bar. The holding in *Fleischmann* is wholly contradictory to the holding of *Lowe v. Quinn*, 27 N.Y.2d 397, 318 N.Y.S.2d 467, 267 N.E.2d 251 (1971). In *Lowe* it was held that a married man had no right to recover an engagement ring which was given by the man while awaiting the dissolution of his existing marriage. The court concluded that the case was governed by the well-settled principle denying a right of recovery where either of the parties to the proposed marriage is already married.

Finally, even if the Georgia Supreme Court looked to the laws of New York, it would be found that New York would apply Georgia law. *Miller v. Miller*, 22 N.Y.2d 12, 290 N.Y.S.2d 734, 237 N.E.2d 877 (1968).

It is thus clear that the decision of the Supreme Court of Georgia does not violate the Full Faith and Credit Clause of Article IV of the Constitution.

III. THE DECISION BELOW IS CLEARLY CORRECT

A. Petitioner's Claims Were Foreclosed by Binding Precedents in the Georgia Supreme Court.

In *Guffin v. Kelly*, 191 Ga. 880, 14 S.E.2d 50 (1941), the plaintiff, while he was a married man living in a state of separation from his wife, became engaged to the defendant's daughter. Subsequently, the engagement was terminated and the plaintiff brought suit to have certain property reconveyed to him. The majority opinion in *Guffin* directed that the property be reconveyed but Presiding Justice Atkinson, dissenting,

stated that no relief should have been granted because of the plaintiff's engagement to another while he was a married man. Justice Atkinson stated that the plaintiff's conduct was contrary to the public policy which encourages marriage and matrimonial harmony.

In *Morgan v. Wright*, 219 Ga. 385, 133 S.E.2d 341 (1963), the Court expressly disapproved and refused to follow the majority opinion in *Guffin* and instead said that it approved the dissenting opinion of Justice Atkinson as being a sound statement of the law. In *Morgan* the Court specifically held that any contract, having a promise of marriage as its consideration, was void and unenforceable when one of the parties to such a contract was already married.

As the Georgia Supreme Court recognized, there is essentially no difference between *Morgan* and the case at bar. In *Morgan* the plaintiff obtained the defendant's promise of marriage by giving the defendant an engagement ring. In the case at bar petitioner was promised stock in return for her promise of marriage. Since there was no material difference between *Morgan* and the case at bar, the Georgia Supreme Court left the parties in their respective positions just as it left the parties in *Morgan* where it found them.

If the Georgia Supreme Court had recognized petitioner's prenuptial agreement, it would have in effect countenanced a contract which was conditioned on the procurement of a divorce. Petitioner's promise of marriage could not have been enforced unless R. J. Reynolds somehow ended his existing marriage, and Reynolds himself did not have the capacity to promise marriage since he was already married. Another prominent factor here is that petitioner has never pretended

innocence or ignorance of R. J. Reynolds' marital status. She associated with him for several years knowing all the while that he was the lawful husband of another woman. The United States Supreme Court long ago said that marriage was an institution, the maintenance of which interests the public greatly, for it is the foundation of the family and of society. *Maynard v. Hill*, 125 U.S. 190 (1888). Petitioner's conduct, along with that of R. J. Reynolds, subverted this public interest and therefore the Georgia Supreme Court was correct in refusing to recognize the validity of their prenuptial agreement.

B. The Georgia Supreme Court's Decision Was Justified by Other Independent Principles of State Law.

Even if the Court were to grant the Petition for a Writ of Certiorari, and even if the Court were then to reverse the decision of the Supreme Court of Georgia and remand for further proceedings, the petitioner would still not be entitled to prevail in this action.

In the orders of the trial court granting summary judgment to the respondents herein, the court based its holding on multiple independently valid state law grounds. Petition, pp. 9a-25a. For example, the court held that any claim that petitioner might have had under the 1945 agreement was barred by any statute of limitations that could be applicable to the matter; in addition, the court held that the complaint was barred by laches. Petition, pp. 19a-22a. The trial court also based its decision on the grounds of accord and satisfaction, release, bona fide purchaser for value without notice, and the sovereign immunity of the State of Georgia. Petition, pp. 14a, 23a-24a. Summary judgment on these grounds was clearly appropriate

regardless of the enforceability of the prenuptial agreement. Reversal of the decision of the Supreme Court of Georgia would be likely to result in judgment for the respondents on another independently valid ground based on state law and would not change the outcome in this case or give petitioner the relief she seeks.

CONCLUSION

For the reasons set forth above, the State of Georgia respectfully urges this Court to deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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